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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 CRS RECOVERY, INC., a Virginia  
11 Corporation, and DALE MAYBERRY,

No. C 06-7093 CW

12 Plaintiffs,

13 v.  
14 JOHN LAXTON, aka  
15 Defendants.  
16 \_\_\_\_\_/

17 ORDER GRANTING  
18 PLAINTIFFS' MOTION  
19 FOR SUMMARY  
20 ADJUDICATION AND  
21 DENYING DEFENDANTS'  
22 CROSS-MOTION FOR  
23 SUMMARY ADJUDICATION

24  
25  
26 Plaintiffs CRS Recovery, Inc. and Dale Mayberry move for  
27 summary adjudication on their claims for conversion and declaratory  
28 relief. Defendants John Laxton and Northbay Real Estate, Inc.  
(NRE) oppose Plaintiffs' motion and cross-move for summary judgment  
or, in the alternative, summary adjudication.<sup>1</sup> The matter was

<sup>1</sup>In addition to Laxton and NRE, the second amended complaint  
names a number of additional Defendants. At the hearing on the  
present motion, Plaintiffs stated that they would voluntarily  
dismiss the claims they have asserted against Defendants other than

1 heard on September 18, 2008. Having considered oral argument and  
2 all of the papers submitted by the parties, the Court grants  
3 Plaintiffs' motion and denies Defendants' motion.

4 BACKGROUND

5 This case arises from the theft of two internet domain names  
6 from Mayberry: rl.com and mat.net. Since this action was  
7 initiated, Mayberry has recovered control of mat.net. Defendants  
8 currently maintain control of rl.com.

9 Mayberry is a citizen of Virginia. On July 23, 1995, he  
10 registered the domain name rl.com through Network Solutions, Inc.  
11 (NSI). RL was intended to be an acronym for "real life," a term  
12 used in the online gaming world. Mayberry also registered the  
13 domain name mat.net at an unspecified time. MAT stands for Micro  
14 Access Technologies, Inc., an internet service provider company  
15 that was owned and operated by Mayberry. The company went out of  
16 business in 2001, but Mayberry continued to maintain the mat.net  
17 domain name through NSI. As the registered administrator of both  
18 domain names, Mayberry provided NSI with the email address  
19 dale@mat.net as part of his contact information.

20 To maintain a domain name registration with NSI, the  
21 registrant must pay yearly registration fees. These fees can be  
22 paid several years in advance or on a yearly basis. Mayberry  
23 states in his declaration that he renewed the registration of  
24 rl.com on July 23, 2002 for three years, leading to an expiration  
25 date of July 24, 2005. This account is confirmed by NSI's business

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26 Laxton and NRE. Those claims are therefore dismissed. The term,  
27 "Defendants," as used in this order, refers to Laxton and NRE only.

1 records.<sup>2</sup>

2 According to NSI's records, on December 19, 2003, control over  
3 the mat.net domain was transferred to Beijing Sinonets Network &  
4 Telecom. Hosting for mat.net was transferred from NSI's servers to  
5 servers at bim.com. After this transfer, Mayberry was unable to  
6 send or receive emails using the dale@mat.net address. At some  
7 point thereafter, Li Qiang was listed as the administrative contact  
8 for the mat.net domain, with an email address of lee@bim.com.<sup>3</sup> As  
9 the administrator of mat.net, Qiang was able to use the  
10 dale@mat.net email address.

11 The circumstances surrounding the transfer of mat.net are not  
12 entirely clear. Defendants' expert submits, with some support in  
13 the record, that Mayberry failed to renew mat.net's registration  
14 when it expired on October 2, 2003. At his deposition, Mayberry  
15 testified that he did not attempt to renew this registration until  
16 sometime in December, 2003, at which point his registration would  
17 have already expired. If Mayberry's registration of mat.net had

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19 <sup>2</sup>Defendants object to the use of the records because  
20 Plaintiffs allegedly failed to serve them with notice of the  
deposition of Natalie Sterling, the NSI records custodian to whose  
declaration the records are attached. However, while failure to  
serve notice of a third-party deposition is improper under the  
Federal Rules of Civil Procedure, it does not appear that  
Plaintiffs actually deposed Ms. Sterling. Instead, Ms. Sterling  
submitted the declaration in lieu of giving deposition testimony.  
Defendants also object to Ms. Sterling's interpretation of the  
records because she has not laid a proper foundation for her  
testimony. However, the Court has not relied on Ms. Sterling's  
interpretation of the documents, but rather on the documents  
themselves.

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26 <sup>3</sup>Plaintiffs assert that the administrative contact information  
was changed on December 19, 2003, but the record they cite in  
support of this assertion appears to identify the administrative  
contact as of March 28, 2004. See Sterling Dec. Ex. B at 14.

1 expired, the domain would have been available for someone else to  
2 register. NSI's documents show that on December 19, 2003, before  
3 the transfer was initiated, Mayberry's contact information was  
4 associated with mat.net's registration. But the same document also  
5 shows that NSI's record of mat.net's registration was created on  
6 December 18, 2003 and was set to expire on October 2, 2004 -- less  
7 than the one-year interval for which registration is purchased.  
8 Plaintiffs do not fully explain these discrepancies. However,  
9 these details are not dispositive of the present motion because  
10 Plaintiffs' claims concern the theft of rl.com, not mat.net.<sup>4</sup>

11 On December 23, 2003, Qiang changed the email address  
12 associated with his NSI user account from lee@bim.com to  
13 dale@mat.net. He then submitted a transfer request to NSI asking  
14 that the domain rl.com be transferred to him. NSI sent an email to  
15 dale@mat.net, which was still listed as the administrative contact  
16 for rl.com, requesting authorization for the transfer. The email  
17 contained a link to a secure web page from which the transfer could  
18 be approved. Mayberry did not receive this email because he no  
19 longer had access to email sent to dale@mat.net. The recipient of  
20 the email -- presumably Qiang -- approved the transfer, and control  
21 of rl.com passed out of Mayberry's hands.

22 It is not clear exactly when Mayberry learned that mat.net and  
23 rl.com had been "hijacked." In his declaration, he states that he  
24 learned of rl.com's status on or about January 19, 2004, when a  
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26       <sup>4</sup>Although Defendants assert that "Mayberry gave up rl.com when  
27 he let mat.net expire," they do not support this conclusory  
statement with any legal authority, as discussed below.

1 third party informed him that the domain was no longer registered  
2 under his name. However, it appears that he learned of problems  
3 with mat.net at an earlier date. Mayberry made several phone calls  
4 to attempt to recover control of the domains, but met with no  
5 success. There are some discrepancies in the record concerning the  
6 details of Mayberry's efforts to recover the domains, but these  
7 details are not material, as discussed below.

8 Rl.com was eventually transferred to an individual in India  
9 named Barnali Kalita. In 2005, Laxton learned that Kalita owned  
10 the domain and contacted him to inquire whether it was for sale.  
11 Laxton is a citizen of California and was interested in purchasing  
12 the domain to serve as a website for his business, NRE,  
13 headquartered in California. Kalita sold rl.com to Laxton for  
14 \$15,000. The sale was completed on May 20, 2005. A visit to the  
15 website rl.com retrieves a page entitled, "Real Estate Loans."

16 In October, 2004, Richard Lau, a principal of CRS Recovery, a  
17 Virginia corporation, learned of the hijacking of rl.com and  
18 contacted Mayberry. Mayberry agreed to transfer all of his rights  
19 to the domain to CRS Recovery in exchange for a monetary payment  
20 and the promise that CRS Recovery would attempt to return mat.net  
21 to him.

22 Plaintiffs assert claims against Defendants for conversion,  
23 intentional interference with contract, violation of the California  
24 Unfair Competition Law, and declaratory relief.

## LEGAL STANDARD

26 Summary judgment is properly granted when no genuine and  
27 disputed issues of material fact remain, and when, viewing the

1 evidence most favorably to the non-moving party, the movant is  
2 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.  
3 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);  
4 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.  
5 1987).

6 The moving party bears the burden of showing that there is no  
7 material factual dispute. Therefore, the court must regard as true  
8 the opposing party's evidence, if it is supported by affidavits or  
9 other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg,  
10 815 F.2d at 1289. The court must draw all reasonable inferences in  
11 favor of the party against whom summary judgment is sought.

12 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
13 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d  
14 1551, 1558 (9th Cir. 1991).

15 Material facts which would preclude entry of summary judgment  
16 are those which, under applicable substantive law, may affect the  
17 outcome of the case. The substantive law will identify which facts  
18 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
19 (1986).

20 Where the moving party does not bear the burden of proof on an  
21 issue at trial, the moving party may discharge its burden of  
22 production by either of two methods:

23 The moving party may produce evidence negating an  
24 essential element of the nonmoving party's case, or,  
25 after suitable discovery, the moving party may show that  
the nonmoving party does not have enough evidence of an  
essential element of its claim or defense to carry its  
ultimate burden of persuasion at trial.

26 Nissan Fire & Marine Ins. Co., Ltd., v. Fritz Cos., Inc., 210 F.3d  
27

1 1099, 1106 (9th Cir. 2000).

2 If the moving party discharges its burden by showing an  
3 absence of evidence to support an essential element of a claim or  
4 defense, it is not required to produce evidence showing the absence  
5 of a material fact on such issues, or to support its motion with  
6 evidence negating the non-moving party's claim. Id.; see also  
7 Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 885 (1990); Bhan v.  
8 NME Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991). If the  
9 moving party shows an absence of evidence to support the non-moving  
10 party's case, the burden then shifts to the non-moving party to  
11 produce "specific evidence, through affidavits or admissible  
12 discovery material, to show that the dispute exists." Bhan, 929  
13 F.2d at 1409.

14 If the moving party discharges its burden by negating an  
15 essential element of the non-moving party's claim or defense, it  
16 must produce affirmative evidence of such negation. Nissan, 210  
17 F.3d at 1105. If the moving party produces such evidence, the  
18 burden then shifts to the non-moving party to produce specific  
19 evidence to show that a dispute of material fact exists. Id.

20 If the moving party does not meet its initial burden of  
21 production by either method, the non-moving party is under no  
22 obligation to offer any evidence in support of its opposition. Id.  
23 This is true even though the non-moving party bears the ultimate  
24 burden of persuasion at trial. Id. at 1107.

25 Where the moving party bears the burden of proof on an issue  
26 at trial, it must, in order to discharge its burden of showing that  
27 no genuine issue of material fact remains, make a prima facie

1 showing in support of its position on that issue. UA Local 343 v.  
2 Nor-Cal Plumbing, Inc., 48 F.3d 1465, 1471 (9th Cir. 1994). That  
3 is, the moving party must present evidence that, if uncontroverted  
4 at trial, would entitle it to prevail on that issue. Id. Once it  
5 has done so, the non-moving party must set forth specific facts  
6 controverting the moving party's prima facie case. UA Local 343,  
7 48 F.3d at 1471. The non-moving party's "burden of contradicting  
8 [the moving party's] evidence is not negligible." Id. This  
9 standard does not change merely because resolution of the relevant  
10 issue is "highly fact specific." Id.

11 DISCUSSION

12 I. Choice of Law

13 The parties dispute whether California or Virginia law should  
14 apply to Plaintiffs' conversion claim. This issue is potentially  
15 dispositive because California law recognizes a property interest  
16 in domain names, Kremen v. Cohen, 337 F.3d 1024 (9th Cir. 2003),  
17 whereas Virginia law does not, Network Solutions Inc. v. Umbro, 259  
18 Va. 759 (2000).

19 "When a federal court sitting in diversity hears state law  
20 claims, the conflicts laws of the forum state are used to determine  
21 which state's substantive law applies." Orange Street Partners v.  
22 Arnold, 179 F.3d 656, 661 (9th Cir. 1999). The Court thus looks to  
23 California choice-of-law doctrine to determine whether to apply  
24 Virginia or California law to the conversion claim.

25 California has adopted the "governmental interest" approach to  
26 choice of law issues. As the California Supreme Court has  
27 explained,

1 the governmental interest approach generally involves  
2 three steps. First, the court determines whether the  
3 relevant law of each of the potentially affected  
4 jurisdictions with regard to the particular issue in  
5 question is the same or different. Second, if there is a  
6 difference, the court examines each jurisdiction's  
7 interest in the application of its own law under the  
8 circumstances of the particular case to determine whether  
9 a true conflict exists. Third, if the court finds that  
there is a true conflict, it carefully evaluates and  
compares the nature and strength of the interest of each  
jurisdiction in the application of its own law to  
determine which state's interest would be more impaired  
if its policy were subordinated to the policy of the  
other state, and then ultimately applies the law of the  
state whose interest would be the more impaired if its  
law were not applied.

10 Kearney v. Salomon Smith Barney, Inc., 39 Cal. 4th 95, 107-08  
11 (2006) (citation and internal quotation marks omitted). "A party  
12 advocating application of foreign law must demonstrate that the  
13 foreign rule of decision will further the interest of that foreign  
14 state and therefore that it is an appropriate one for the forum to  
15 apply to the case before it." Tucci v. Club Mediterranee, S.A., 89  
16 Cal. App. 4th 180, 188-89 (2001). If California law can be applied  
17 without violating the policy of the foreign state, there is a false  
18 conflict, and California law should be applied. See id.

19 The parties do not dispute that, as noted above, the rule in  
20 California differs from that in Virginia in a material respect.  
21 Accordingly, the Court proceeds to determine whether Virginia has  
22 an interest in applying its law to this case.

23 Defendants argue generally that Virginia has an interest in  
24 not having the "underlying policies" of its property law "negated"  
25 by the Court's recognition of a property right, rather than just a  
26 contract right, to a domain name. But they have not identified any  
27 specific policy advanced by the rule, and their argument thus

1 amounts to saying that Virginia's interest in having its rule  
2 applied is in not having another State's rule applied. This is no  
3 more of an interest than any State will always have in any  
4 comparative interest analysis -- California likewise has an  
5 generalized interest in not having the "underlying policies" of its  
6 property law, which recognizes a property right to domain names,  
7 negated. The question is whether the policies underlying  
8 Virginia's rule would actually be furthered by applying the rule in  
9 the specific context of this case. Accordingly, the Court must  
10 focus on the specific interests that are advanced by the rule.

11 Virginia's rule protects the purchaser of a domain name from  
12 liability for conversion. Because Virginia has established that no  
13 property rights can be exercised over a domain name, individuals  
14 who purchase a domain within the State can justifiably expect that  
15 they will not be held liable for conversion in connection with that  
16 purchase. Virginia's interest is thus appropriately characterized  
17 as in providing these purchasers with a predictable limitation of  
18 their potential liability. See Tucci, 89 Cal. App. 4th at 190.  
19 Defendants have cited no authority to support the view that the  
20 State's decision not to impose liability for conversion should  
21 instead be seen as expressing a particular interest in preventing  
22 its citizens, like Mayberry, from recovering a domain name that has  
23 been stolen from them.

24 If Defendants resided in Virginia or if Laxton had purchased  
25 rl.com in Virginia, Virginia could be said to have an interest in  
26 applying its rule in this case. However, Laxton is a citizen of  
27 California and the conduct that gave rise to Defendants' liability

1 for conversion is Laxton's purchase of rl.com from Kalita. See  
2 Soc'y of Cal. Pioneers v. Baker, 43 Cal. App. 4th 774, 781-83  
3 (1996) (noting the long-standing rule that a cause of action for  
4 conversion against a subsequent purchaser of the property accrues  
5 when the purchaser obtains possession, not at the time of the  
6 original conversion). No aspect of that transaction took place in  
7 Virginia. It is not clear that Laxton would even be subject to the  
8 personal jurisdiction of the Virginia courts if this action had  
9 been brought there. Virginia has no interest in protecting the  
10 conduct of a California resident when that conduct has no  
11 connection to Virginia. As California residents, Defendants had no  
12 justifiable expectation that their conduct would be shielded from  
13 liability for conversion. Applying Virginia law in this instance  
14 would thus do nothing to further that State's interest in providing  
15 its residents with a predictable definition of liability.<sup>5</sup> In  
16 contrast, California has an interest in regulating conduct that  
17 occurs within its borders and in ensuring that redress is available  
18 when such conduct is tortious. See Zimmerman v. Allstate Ins. Co.,  
19 179 Cal. App. 3d 840, 846 (1986). California therefore has an  
20 interest in seeing its rule applied to this case.

21 Defendants rely heavily on choice-of-law doctrine as it  
22 applies to contract disputes. They note that the registration  
23 agreement between Mayberry and NSI provided that all disputes

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25 <sup>5</sup>Nor does the fact that Mayberry was originally injured in  
26 Virginia indicate that Virginia law should apply; in adopting the  
27 governmental interest approach to choice of law questions,  
California displaced the previous approach of applying the law of  
the state where the injury occurred. Hurtado v. Superior Court, 11  
Cal. 3d 574, 579-80 (1974).

1 concerning their contractual obligations would be governed by  
2 Virginia law. But this is not an action for breach of the NSI  
3 contract. Likewise, the existence of an agreement between Mayberry  
4 and Laxton is wholly irrelevant to Plaintiffs' conversion claim.  
5 Plaintiffs are asserting a property right against Defendants. For  
6 the same reason, the terms of the contract between Laxton and  
7 Kalita (which has no connection to Virginia other than that the  
8 domain registration information is allegedly located in a database  
9 on computers in that State) has no bearing on the law that should  
10 be applied to the conversion claim.

11 Defendants further assert that Virginia has an interest in  
12 applying its law because, if California law were applied in this  
13 case, it would "impact domain name registration services for some  
14 of the largest domain name registrars and registries in the world,  
15 including NSI, VeriSign and others, which have their computer  
16 databases located in Virginia." Defs.' Br. At 8. Defendants fail  
17 to explain, however, how applying California law to Plaintiffs'  
18 conversion claim would have any effect whatsoever on the operations  
19 of the providers of domain registration services. The liability of  
20 those providers is simply not at issue here, and thus applying  
21 California law to the conversion claim would not "encourage  
22 plaintiffs to forum shop in order to try to circumvent the settled  
23 law of Virginia" and hold providers liable. Id. at 9. Nor does  
24 the fact that the domain registration information is allegedly  
25 located in a database on computers in Virginia<sup>6</sup> give Virginia an

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27 <sup>6</sup>The parties dispute the location of the registry information.  
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1 interest in protecting Defendants' conduct.

2 Because Virginia does not have an interest in the application  
3 of its rule to this case whereas California does, the posited  
4 conflict is a false one. The Court will therefore apply California  
5 law.

6 II. Liability for Conversion Under California Law

7 Under California law, conversion is defined as "the wrongful  
8 exercise of dominion over the personal property of another."

9 Fremont Indem. Co. v. Fremont General Corp., 148 Cal. App. 4th 97,  
10 119 (2007). "The basic elements of the tort are (1) the  
11 plaintiff's ownership or right to possession of personal property;  
12 (2) the defendant's disposition of the property in a manner that is  
13 inconsistent with the plaintiff's property rights; and  
14 (3) resulting damages." Id. Damages are presumed in conversion  
15 actions. See Cal. Civ. Code §§ 3336-3337.

16 Defendants argue that, even if California law applies to  
17 Plaintiffs' claim against them, in order to prove that they are  
18 liable for conversion, Plaintiffs must establish that the original  
19 theft of rl.com by Qiang constituted conversion under Virginia law.  
20 This argument is not persuasive. It does not appear that Virginia  
21 law would apply to a conversion claim in this Court by Plaintiffs  
22 against Qiang, in that Qiang is not a Virginia citizen and does not  
23 appear to have stolen rl.com in Virginia. But even if it did, the  
24 conversion claim before the Court is not against Qiang, it is  
25 against Defendants. Pursuant to California law, which the Court  
26 has already determined applies to Plaintiffs' claim against  
27 Defendants, Mayberry had a property right to rl.com at the time it

1 was taken from him. He was not lawfully dispossessed of that right  
2 by Qiang's seizure of the domain without Mayberry's authorization,  
3 and thus it was not possible for Defendants to acquire a right to  
4 the domain superior to Mayberry's by virtue of Laxton's purchase  
5 from Kalita. Defendants are therefore prima facie liable for  
6 conversion.

7 It is of no consequence that Defendants purchased rl.com in  
8 good faith and without knowledge of Qiang's previous theft of the  
9 domain name. In Express Media Group, LLC v. Express Corp., 2007 WL  
10 1394163 (N.D. Cal.), the court addressed the applicability of the  
11 good-faith-purchaser defense in an action for conversion of a  
12 stolen domain name. The court noted that California law  
13 "distinguishes between the person who purchased from someone who  
14 obtained title to the property by fraud and the person who  
15 purchased from a thief who had no title to sell. . . . An  
16 involuntary transfer results in void title, while a voluntary  
17 transfer, even if fraudulent, results in voidable title." Id. at  
18 \*5 (citing Cal. Com. Code § 2403(1); Suburban Motors, Inc. v. State  
19 Farm Mut. Auto. Ins. Co., 218 Cal. App. 3d 1354, 1360-61 (1990)).  
20 "[A]n innocent purchaser for value and without actual or  
21 constructive notice that his or her vendor has secured the goods by  
22 a fraudulent purchase is not liable for conversion." Id. But the  
23 rule is different when it comes to involuntary transfers: because  
24 "[s]tolen property remains stolen property," a thief "cannot convey  
25 valid title to an innocent purchaser of stolen property." Naftzger  
26 v. Am. Numismatic Soc'y, 42 Cal. App. 4th 421, 432 (1996).  
27 Accordingly, mere possession of a domain name that was

1 involuntarily transferred from the rightful owner is sufficient to  
2 convey liability for conversion. See Express Media, 2007 WL  
3 1394163, at \*5-\*6. Defendants have not pointed to any evidence  
4 that Mayberry voluntarily transferred the title of rl.com to Qiang  
5 as a result of fraud.<sup>7</sup> To the contrary, all of the evidence  
6 suggests otherwise.

7 Defendants argue that Mayberry abandoned his right to possess  
8 rl.com, and therefore Plaintiffs cannot prevail on their conversion  
9 claim. In order to succeed on an abandonment defense to conversion  
10 under California law, however, a defendant must show a "clear,  
11 unequivocal, and decisive act" demonstrating a waiver of the  
12 plaintiff's property rights. See Hopson v. Nat'l Union of Marine  
13 Cooks and Stewards, 116 Cal. App. 2d 320, 325 (1953) (addressing  
14 waiver or abandonment of a legal right generally); see also Ananda  
15 Church of Self-Realization v. Mass. Bay Ins. Co., 95 Cal. App. 4th  
16 1273, 1281-82 (2002) (upholding an abandonment defense to a  
17 conversion claim where the property at issue had been discarded in  
18 an outdoor garbage receptacle). Defendants point to no such  
19 affirmative relinquishment of Mayberry's right to exercise control  
20 over rl.com. It is undisputed that Mayberry had paid to register  
21 the domain with NSI through July 24, 2005. After he learned that  
22 the domain had been stolen, he attempted to rectify the situation,  
23 but met with no success. The fact that, at one point, he had  
24 resigned himself to losing the domain (as he stated at his  
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26 <sup>7</sup>Qiang may have committed fraud on NSI, but insofar as the  
27 transfer was "voluntary," the volition is attributable to NSI, not  
to Mayberry, the actual possessor of the property rights at issue.

1 deposition) does not demonstrate a voluntary abandonment of his  
2 rights. It simply indicates that he had concluded that further  
3 attempts to recover the domain would continue to meet with failure  
4 so long as Qiang, who was effectively immune from any legal  
5 recourse in the United States, controlled it. Nor do Defendants  
6 cite any authority for their assertion that Mayberry's failure to  
7 maintain a live website at rl.com signifies an abandonment of his  
8 right to the domain. The "use-it-or-lose-it" rule proposed by  
9 Defendants may express their preferred policy with respect to  
10 domain ownership, but as a legal theory it is not supported by case  
11 law. The Court can also divine no intent to abandon rl.com from  
12 Mayberry's failure to update his contact information with NSI once  
13 he lost access to the email address, dale@mat.net. It is not clear  
14 when Mayberry first learned that he no longer could access his  
15 email, and only four days passed between mat.net's transfer to  
16 Qiang and the theft of rl.com. In any event, Mayberry's failure to  
17 change the contact information for rl.com immediately following the  
18 loss of mat.net cannot be interpreted as an affirmative abandonment  
19 of his rights to the domain.

20 Defendants also assert that the equitable doctrine of laches  
21 should bar Plaintiffs' conversion claim because Plaintiffs delayed  
22 unreasonably in bringing this lawsuit. However, as Plaintiffs  
23 point out, conversion is a legal claim, not an equitable one. The  
24 statute of limitations thus governs the timeliness of Plaintiffs'  
25 claim, not the equitable doctrine of laches. Defendants do not  
26 refute this argument in their reply, nor do they argue that  
27 Plaintiffs failed to file this action within the applicable

1 limitations period. It appears that they have withdrawn this  
2 argument. In any event, Plaintiffs did not delay unreasonably in  
3 bringing this lawsuit, and thus the doctrine of laches, even if it  
4 applied, would not prevent them from asserting their claim.

5 Finally, Defendants argue that CRS Recovery's entitlement to  
6 relief is based on an invalid transfer and assignment. This  
7 argument is based on a provision in Mayberry's service agreement  
8 with NSI for the registration of rl.com. The agreement provides  
9 that Mayberry's rights under the contract are not assignable or  
10 transferrable. But Plaintiffs do not assert claims against  
11 Defendants for breach of the service agreement; they assert a  
12 conversion claim. The non-assignment clause of the NSI contract is  
13 therefore irrelevant.

14 For these reasons, the Court finds that Defendants are liable  
15 to Plaintiffs for conversion of the rl.com domain. As a remedy,  
16 Plaintiffs are entitled to specific recovery of the domain. See  
17 Cal. Civ. Code §§ 3379-3380; Express Media, 2007 WL 1394163, at \*4.

18 III. Claim for Declaratory Relief

19 Plaintiffs also seek a declaration of their rightful title to  
20 rl.com. Although such a declaration is arguably no different than  
21 judgment in their favor on the conversion claim, the Court will  
22 grant this claim for the reasons stated above.

23 CONCLUSION

24 For the foregoing reasons, Plaintiffs' motion for summary  
25 adjudication is GRANTED (Docket No. 118). The Court grants summary  
26 judgment against Defendants John Laxton and Northbay Real Estate on  
27 Plaintiffs' claims for conversion and declaratory relief.

1 Defendants' cross-motion for summary adjudication is DENIED (Docket  
2 No. 131).

3 At the hearing, Plaintiffs agreed to dismiss the second and  
4 third causes of action against Defendants if Plaintiffs prevailed  
5 on the present motion. Those claims are therefore dismissed.  
6 Plaintiffs' motion for an extension of the discovery period (Docket  
7 No. 161) is DENIED as moot.

8 Plaintiffs shall, within ten days, file a proposed judgment  
9 conforming to the terms of this order.

10 IT IS SO ORDERED.

11  
12 Dated: 9/26/08

*Claudia Wilken*

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13 CLAUDIA WILKEN  
14 United States District Judge  
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